THE SAVIDGE REPORTS ... ... p. 494
THE LEGAL ASPECT OF GROUP INSURANCE ... p. 495

The Solicitors' Journal

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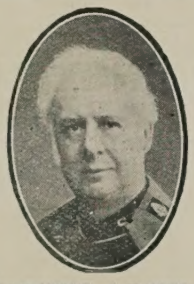

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The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page vi.

VOL. LXXII. **Saturday, July 21, 1928.** No. 29

Current Topics: Vicarious Liability—Medical Histories and Issues of Fact—Restrictive Covenants as to Intoxicating Liquors—"Gate Crashers"—Enticing a Wife—Appointment of an Executor by the Court—Bureaucratic Authority—The Police and the Post Office 491
Practice Notes 493
The Savidge Reports 494
The Legal Aspect of Group Insurance 495
A Conveyancer's Diary 496
Landlord and Tenant Notebook .. 497
Our County Court Letter 497
Correspondence 498
Legal Parables 500
Points in Practice 501
Notes of Cases 502
Societies 503
Legal Notes and News 506
Court Papers 506
Stock Exchange Prices of Certain Trustee Securities 506

Current Topics.

Vicarious Liability.

LORD JUSTICE VAUGHAM WILLIAMS, in his judgment, in the case of *Holt* v. *Wren*, 1903, 1 K.B. 610, speaking of the Sale of Goods Act, 1893, referred to the difficulty experienced by the most able codifier of drawing an exhaustive code capable of including the innumerable cases which must arise under any particular Act. It is submitted, in addition, that this difficulty of codification, in the case of the above Act, includes the danger of occasionally working considerable hardship on a technically innocent vendor. The recent case of *Morelli* v. *Fitch & Gibbons*, 72 SOL. J. 503, is an excellent example in this respect. The plaintiff purchased a bottle of Stone's ginger wine from a shop of which the defendants were the licensees, and in subsequently attempting to extract the cork by means of a corkscrew the neck of the bottle broke and his left hand was seriously injured. In a county court action for damages the plaintiff was awarded £21 damages, and this decision was upheld on appeal. The case came within s. 14 (2) of the Sale of Goods Act, 1893, which states that there is an implied condition that goods bought by description shall be of merchantable quality; and it is apparently immaterial whether the seller of the goods is the manufacturer or not. The provision "whether he be the manufacturer or not," is surely calculated to work inequitably in a number of cases, and it is contended that its omission from the sub-section would be in the interests of strict justice. This suggestion may be illustrated by the present case (*Morelli* v. *Fitch & Gibbons*); the county court judge found that the defect in the bottle was such that no reasonable examination by the plaintiff would have revealed it. Was the defendant, the seller, in any better position to discover it? Granted that he may proceed against the actual manufacturers of the bottle in respect of the damage he has had to pay, but ought he to be compulsorily involved at all in a matter for which, in fact, he cannot be said to be primarily responsible? *Geddling* v. *Marsh*, 65 SOL. J. 113; 1920, 1 K.B. 668, is an interesting case of a retailer of minerals suing the manufacturers for personal injuries sustained by reason of a bursting bottle.

Medical Histories and Issues of Fact.

IT IS often a necessary preliminary to diagnosis and treatment that a doctor should acquaint himself with the patient's medical history. The latter may consist, in workmen's compensation and running down cases, of a recital of the very facts which are in dispute in the action. In the recent case of *Wilks* v. *Gregory*, at Birmingham, His Honour Judge RUEGG, K.C., remarked that it was getting a habit with doctors to take particulars of this kind, and then to come into court and give evidence of what they were told. On the defendant's behalf it was explained that the statement was obtained from the plaintiff in the presence of the man's own doctor, and was written down in the presence of both, there being no dispute as to the man's medical condition. For the plaintiff it was suggested that it was a very undesirable practice for a professional man to go outside his strictly medical duties to get a statement of that kind. The learned judge stated, however, that nothing unusual had been done, as medical men were making a practice of that kind of thing. He held a very strong view that doctors should not get these statements, as if people knew that doctors were going to get statements in that way they would not go to the doctors. For the defendant it was contended that a doctor had a perfect right to obtain a history of the case, which was all the witness had done, and that counsel had a perfect right to put in the statement obtained by that witness. The only comment appears to be that the use of the medical history should not be extended beyond its original purpose, and that the views which will be generally approved are those expressed by the learned County Court judge.

Restrictive Covenants as to Intoxicating Liquors.

A METHOD by which the above may be rendered ineffective was illustrated in the recent case of *Bretherton and Another* v. *Manchester Brewery Company Limited and Another* in the Lancaster Palatine Court. The plaintiffs were trustees of the will of Sir HUMPHREY DE TRAFFORD, who, in 1868, had granted a lease of property known as "Northleigh." The lessee had covenanted not to carry on, or permit to be carried on, the trade, business or employment of a publican, victualler or retailer of malt, spirituous or fermented liquors. The brewery company acquired the property in 1925, and after two unsuccessful applications for a licence, they let the premises to the "Northleigh" Social Club. The sale of intoxicating liquors in the club was alleged to be a breach of the above covenant, but the defendants' case was that (1) the rules prohibited sales to visitors, whose drinks were paid for by members only, (2) there was no retailing or carrying on business, nor any irregularity or impropriety in the conduct of the club, (3) the brewery company had exercised the ordinary rights of an owner in letting the property to the club. They relied on *Metford* v. *Edwards*, 1915, 1 K.B. 172, in which it was decided that there is no sale by retail within the meaning of the Licensing (Consolidation) Act, 1910, s. 65, where the members of an association own and keep intoxicating liquor on the club premises, and the same is distributed by one of the members in return for payment. The plaintiffs contended that the purpose of the covenant was to prevent

having on the land any building in which intoxicating liquors were sold, and that the letting to the club was a device to evade the covenant. Vice-Chancellor COURTHOPE WILSON, K.C., said that this was not a proprietary club, as the property was vested in all the members, and the supply of the joint property to one member was not a sale within the legal meaning of the term. There was therefore no breach of the covenant. Even if the brewery company took part in the management of the club and were practically in a position to compel the club to buy their liquors, they could give notice to determine the tenancy, and there was therefore no tie. Judgment was therefore given for the defendants.

"Gate-Crashers."

THE AFFAIR of Lady ELLESMERE'S ball may create mild amusement in the breasts of those who move in less exalted circles. Legally the "gate-crasher," or uninvited guest, is, of course, a trespasser, but his only liability as such is the duty to depart if so required by the owner of the house or any of his servants. It may be suggested, however, that in an aggravated case, where the offender partakes of the hospitality offered not only by dancing, but by consuming wine or other refreshments, that the offence of obtaining goods by false pretences has been committed. The "gate-crasher" certainly holds himself out to the waiter with the champagne bottle as a properly invited guest, or he would not be served. The goods being obtained on such implied representation, the proof of offence would be complete by showing that the defendant was neither invited nor had reasonable cause to believe that he was invited, and that he had requested to be supplied with refreshment and had been so supplied. If he had merely taken up a bottle and helped himself, the charge would presumably be simple larceny, but not, of course, burglary, for he had entered the house without breaking in. A hostess who obtained a conviction would thereafter with reasonable certainty be free from the nuisance, which already shows signs of extending from the mere sponge or amateur to the professional thief, who comes, not as a social climber, nor to obtain free refreshment, but strictly on business for furs or jewellery.

Enticing a Wife.

IT WAS suggested in the course of the recent action brought by one officer against another for damages for the enticement of the former's wife away from him, that this form of action had not been invoked since 1857. This, however, is not the case, for in *Smith* v. *Kaye*, 1904, 20 T.L.R. 261, a husband recovered £500 damages against his brother-in-law and another man, who had induced his wife to leave him. The case was rather a bad one, no fault being found with the plaintiff other than disparity of means and station, and counsel for the defendants had an uphill task. In *Winsmore* v. *Greenbank*, 1745, Willes, 577, the damages were £3,000, and possibly this may have been the first case of the sort, for the objection was made and overruled that there was no precedent for such an action, and therefore that it would not lie. More interest perhaps attaches to the converse case, that of enticement of a husband from a wife, by reason of the difference of judicial opinion in the leading case of *Lynch* v. *Knight*, 1861, 9 H.L.C. 577. Lord CAMPBELL had expressed the opinion that such an action would lie, but Lord WENSLEYDALE thought otherwise. In *Gray* v. *Gee*, 1923, 39 T.L.R., Lord DARLING had to decide the exact point, and ranged himself with Lord CAMPBELL. The jury, however, found for the defendant. In the United States and Canada recourse to this form of action seems to be far more common than it is here, and the wife's right was established in both jurisdictions long before *Gray* v. *Gee*. Since an English wife has a clear right to desert her husband, as established in *R.* v. *Jackson*, 1891, 1 Q.B. 671, a husband plaintiff launching this form of action here has the task affirmatively to prove that the defendant caused his wife to leave him, almost certainly in the face of the wife's denial that this was the case. This and the fact that, if another man induces a wife to leave a husband, there is normally ground for a divorce petition, may explain the rarity of the action. It might perhaps be used by a wife whose husband had been enticed away by a woman of means, but the experiment seems to have been seldom or never made. Under s. 189 (1) of the Judicature Act, 1925, a husband may obtain damages for adultery without seeking divorce, but for obvious reasons this also is very rare.

Appointment of an Executor by the Court.

BEFORE 1926 it was unqualifiedly true to say that an executor derived his office from a testamentary appointment only: see Williams on Executors, 11th Ed., p. 159. Thus, the learned author of the "Office of Executor" (14th Ed., p. 3) observed: "A will is the only bed where an executor can be begotten or conceived." But the legislation of 1925 enables the court, in certain circumstances, to appoint a personal representative (meaning an executor or administrator). Thus, if there is only one personal representative (not being a trust corporation) then, during the minority of a beneficiary or the subsistence of a life interest, and until the estate is fully administered, the court may, on the application of any person interested or of the guardian, committee or receiver of any such person, appoint one or more additional representatives. Application for such appointment must be by summons and must be supported by affidavit, and the original grantee, if he is not the applicant, must be served, unless the registrar otherwise directs. The original grant may be noted with the appointment or it may be impounded or revoked as the circumstances require or as the registrar directs: see N.C. Prob. Rules, 1925, 2nd Sch., Probate Rules, r. 115, District Rules, r. 108. Again, a testator is *to be deemed* to have appointed as his special executors in regard to "settled land" (which does not cease to be settled land on his death), the persons, if any, who are the trustees of the settlement of that land, unless he has already made those persons his special executors by express appointment. It is only by a fiction of law that the implied appointment of special representatives under this section can be described as testamentary. Their birth is at least conceived in statute and not in testament. The statements of the learned text-book writers referred to require revision accordingly.

Bureaucratic Authority.

IT IS announced that the Lord Chief Justice, Lord HEWART, is engaged in writing a book on the encroachments of bureaucracy, the provisional title being: "Power and the People." The subject is undoubtedly one of vital importance to our system of judicial administration, and consequently to the general public, in whose interests and for the protection of whose rights and privileges it is essential that arbitrary power in a non-judicial body should be strongly discountenanced in respect of controversial matter of a judicial nature. Reference has already been made in these columns to this important subject. Lord Justice SANKEY, in a lecture on "The Principles and Practice of the Law to-day," given before the University of London in March last (72 SOL. J. 184 *et seq.*), said: "It is suggested that the war gave a great impetus to the tendency already in existence to create tribunals of a character different from the ordinary courts of our country, to leave the decision of many important matters to persons without the training and experience of judges, and to substitute in many cases a bureaucracy for a judiciary as we know it." He went on to refer to a number of Acts of Parliament indicative of the present legislative tendency to clothe bureaucracy with what is tantamount to judicial authority, and in particular to the Mines (Working Facilities and Support) Act, 1923, an excellent example of conferring bureaucratic authority which provides that in certain matters

dealt with under the Act the Railway and Canal Commission has jurisdiction only if the Board of Trade has decided that there is a *primâ facie* case. Both in his judgments and in public addresses, the Lord Chief Justice has in no uncertain words denounced this invasion of judicial territory by Government departments. In the case of *Rex* v. *Minister of Health; Wortley Rural Council, ex parte*, 1927, 2 K.B., at p. 236, he drew attention to s. 67, sub-s. (1) of the Rating and Valuation Act, 1925, which he described as a very remarkable provision which might interest those persons, if there were any, who observed the progress of departmental authority. The sub-section provides that: "If any difficulty arises in connexion with the application of this Act to any . . . the Minister may by order remove the difficulty." The imagination failed, said his lordship, to contemplate at one view the extent and variety of the power which is given to the Minister under those words, but described the Act as the high-water mark of legislative provisions of this character, and said that if they had decided to quash the order in question before the court as having been made *ultra vires*, the Minister might on the following day, under the provisions of s. 67, have made an order. It should be borne in mind, however, that the power conferred by s. 67 is exercisable only until 31st March, 1929. In "Censured Shipmaster," 72 Sol. J. 294, is the passage: "The right, and the right to insist, that the particular merits of one's cause be tried by an impartial authority, with a subsequent appeal, if desired, is the hall-mark of British justice. Any detraction therefrom constitutes a serious menace to the exercise of that justice, and must be contested with vigour." No doubt through the medium of his book Lord Hewart will contest any inequitable or unnecessary bureaucratic encroachment with a vigour proportionate to the eminently suitable qualifications and experience he brings to the task, and his work will be awaited eagerly by all interested.

The Police and the Post Office.

In a recent case the Hereford police seem to have been astoundingly ill-advised upon their law. A mail-van driver delivered an express parcel to an innkeeper, who placed in the mail van a return parcel, duly addressed. A police officer arrived on the scene, unpacked the parcel and found it contained bottles of beer. The police thereupon summoned the licensed victualler for selling beer to the mail van driver otherwise than in permitted hours. How anyone could conceive this transaction to be a sale to the mail van driver is difficult to understand. But many people do appear to imagine that there can be a sale without a purchase. Even the Hereford police would not, one supposes, go so far as to say that the driver, making no payment or promise of payment for the parcel, the contents of which were unknown to him, could be said to have bought the beer. Why they rested at the servant it is difficult to say. Why not allege a sale to the Postmaster-General or to the Crown? Let us, however, not stop at beer in considering this fascinating view of the law! Do we all sell our parcels to the counter clerks when we hand to them for despatch our Christmas puddings, fountain pens, hats, books, and what not? If so, the addressees presumably receive them as free gifts from the State! Another aspect of the case demands attention. Can the police claim the right to search the mails? It used to be supposed that it required a warrant of the Secretary of State before letters could be opened, though it is now an open secret that thousands of closed packets, paid at the letter rate, are opened on suspicion of containing advertisements for lotteries, without specific warrant. Parcels are no doubt in a different category. They are posted with the knowledge that they may be opened by postal and customs officials for various purposes, but most of us thought that when we entrust a parcel to the Postmaster-General none but his servants or the customs officers will handle it.

Practice Notes.

DIVORCE.

In a defended suit for dissolution of marriage in which Mr. Justice Bateson gave judgment on the 15th May, the question of the correct practice to be followed by a petitioner's solicitor in the following circumstances was considered. The husband petitioner had brought a written confession to the solicitor which, besides offending against the rule of evidence laid down in *Russell* v. *Russell*, 1924, A.C. 687, was silent as to the name and address of the adulterer and as to the time and place of the alleged offence. The wife had refused to divulge the identity of the man to her husband. Thereupon the solicitor, anxious to put the proceedings on behalf of the husband in train, and mindful of the affidavit that he would have to make in support of an application for leave to dispense with a co-respondent, if the wife persisted in concealing the identity, went to the house and proceeded to question the wife. The result of the interview was, firstly, that the wife said she could not give the man's name as she did not know it—and if matters had stopped there the solicitor might have been in order, although the solicitor was hard pressed in cross-examination to explain why he should not have suggested to the wife that she should obtain independent advice or warned her that the answers to the questions might be used against her in the contemplated proceedings. However, the solicitor went on to elicit answers containing positive information as to the time and place of the offence.

On being asked by the court to justify his action, the solicitor said he relied on a passage in Mr. Rayden's book on the "Practice of Divorce," 2nd Edition, at p. 155, note (*f*), which is as follows: . . . . "In *Grose* v. *Grose* (1897), 78 L.T. 89, the Court required that inquiry should be made of the wife as to who the man was, before granting the application" [i.e., to dispense with naming a co-respondent]: "but see this practice commented on and criticised in *Franklin* v. *Franklin and Minshall*, 1921, P. 407, 413, 414.'" The cases cited were not actually before the court.

Mr. Justice Bateson said that a point which he would not decide, as it was not necessary, was whether, in view of the decision in *Russell* v. *Russell*, a solicitor, with the knowledge of an admission by the wife in terms bastardising a child, could thereafter proceed to put any question to the wife as to the name of the adulterer; all, however, that the practice and the passage in Mr. Rayden's book warranted, were questions confined to the name and address of the adulterer.

But *quære* whether even to do this would be admissible where the wife had not made an admission of adultery, in view of Mr. Justice McCardie's observations in *Franklin* v. *Franklin and Minshall*, at p. 413, where he says:—

> "I was referred to the case of *Grose* v. *Grose*. There the husband had presented a petition on the ground of the wife's adultery. He asked for leave to proceed without a co-respondent, on the ground that his name and address were unknown. The President, Sir Francis Jeune, said that the solicitor for the husband should write to the wife, make an appointment, and see her for the purpose of eliciting the desired information. I do not think that this case [*Grose* v. *Grose*] can be properly cited as a precedent. There the wife had written admitting the misconduct, and had referred to a certain 'young man.' Apparently she not only did not deny the adultery, but was probably anxious and willing to give further information. This case can scarcely afford a basis for any practice of asking the wife for the name of the adulterer, and can, I think, have no application whatever in any event where the wife has denied or has not admitted the misconduct."

A UNIVERSAL APPEAL.
To Lawyers: For a Postcard or a Guinea for a Model Form of Bequest to the Hospital for Epilepsy and Paralysis, Maida Vale, W. 9.

The Savidge Reports.

It is said of this case that though the public has had before it, in the Press, a very full report of the evidence, they are, in forming a judgment upon it, at a disadvantage as compared with the members of the tribunal who heard and saw the witnesses. It is asserted that, as between those members two, as trained lawyers, are "more likely to appreciate testimony at its true value than a man whose past activities have been directed to wholly different subjects." It is alleged that both the findings of the tribunal and the attitude of many persons towards those findings are affected by politics.

The first statement is thoroughly sound. The second runs directly counter to the experience of centuries which has given us the jury as judges of facts, a lay tribunal having the oft-expressed and unfeigned approval of some of our greatest judges. It is the common fallacy which places the specialist above the ordinary intelligent man of affairs, not merely in his own department (here the law) but in the every day doings of life, in the appreciation of which the specialist is, indeed, sometimes defective. The third is, so far as true, a melancholy fact, most in evidence, unfortunately, in the Press comments (not excluding *The Times*) upon the reports.

To discount in advance similar comments upon the following remarks, we may perhaps be permitted to inform our readers that the writer is a lawyer, trained by many years' practice in the criminal courts, that he was present ***solely*** as our representative throughout the inquiry, and that he has no political connexions or leanings, being of opinion that, though there must be men called to politics, many of whom, be it said, seek honestly to benefit their country through their party, yet no sane student of history can regard any particular political theory as answering all occasions, or consider all virtue as lying in one party or group of men.

The *Savidge Case* has to be considered in the light of the evidence, of the probabilities, and of knowledge of human nature. The reports will be properly evaluated only by those who compare them carefully and submit them to these criteria. Here we can deal (but only briefly) with some of the principal points.

No one will ever know exactly what happened at Scotland Yard between Miss Savidge and her interlocutors. Miss Savidge is a highly strung young woman, subject to hysterical attacks, her testimony liable to be coloured by her emotional reactions. Chief Inspector Collins and Sergeant Clark are two policemen, cool and determined, never swerving by a hairsbreadth from an account conceived with that sense of official rectitude so fatal to the exact presentment of the whole truth. We are offered two pictures, one unconsciously touched up, its light and shade ill-balanced, its perspective faulty; the other, hard in outline as a geometrical diagram, with little perspective, and no light and shade at all. The mathematical diagram is the easier to reason upon, and has commended itself to the legal minds, whose neat inferences can be comfortably based upon its harsh lines. But the elusive truth is perhaps better ascertained from the more amateur performance. There will be obscurities and difficulties, but the looser texture will let the light through in some places. When, for instance, Miss Savidge says she told Miss Wyles she wanted to go home to change her coat, no one can avoid seeing the rather frightened young person offering a naive excuse to get home, where there might be support for the stronger stand she was too unsure of herself to make unsupported. Had she said she made an imperative demand to go home first, and was refused, one would have begun to doubt. When she tells us that, though inwardly perturbed, she smiled at the policemen, we see her using the ordinary artifice of attractive youth to conciliate those feared. Had she said she voiced a determined refusal to answer questions, and been bullied into answering, we should have disbelieved.

The majority report, in going into the genesis of the police interrogation of Miss Savidge, points out that the Director of Public Prosecutions, before he could decide whether or not to launch a prosecution against the two police officers for perjury in the Hyde Park case, had to learn what the two principal witnesses on the other side, Sir Leo Money and Miss Savidge, would say in chief, and whether they could stand fire in cross-examination. This is true. It would have been folly to proceed with witnesses whose stories did not substantially tally, or whose credibility would crumble if their credit were severely attacked, as it would certainly be.

The Director's instructions for inquiry were proper and exhaustive, save that they do not appear to have included any suggestion of search for the "umbrella-man." That search was no doubt not a hopeful one, and the man might have been useless when found, but nowhere in the evidence in the inquiry, or in the reports on it, is there any mention of an attempt to get him.

But that the Director was compelled to rely upon the police to take statements because he had no one else available is not clear. In his evidence he emphasised that his professional staff could not conduct inquiries, and there is no doubt a good deal to be said for not imposing upon them even the duty of taking statements from witnesses whom they will later examine in court. But, at least exceptionally, there seems no reason why a statement should not be taken in the Director's office, and all that was wanted from Miss Savidge was a statement. Any inquiries arising upon it could have been conducted by the police. But the ordinary practice was applied to the extraordinary case.

Miss Savidge was fetched with female escort in the person of Inspector Wyles. All the Commissioners accept as truth that Miss Savidge said "Oh, I will go with her." There can be no doubt that this lady gave confidence to the girl. In the policewoman's own words and those of Inspector Collins she was a "comfort." But this comfort was withdrawn when the statement was to be taken. Accepting the police account that Miss Savidge did not ask for her to remain, it surely was a little stupid to let her go, and so lay themselves open to the very allegations which, true or untrue, were afterwards made. This wooden official attitude explains for us much for which harsher critics find unkinder explanations.

But that Miss Savidge was frightened at having to go to Scotland Yard and also while there, even in spite of what the majority Commissioners call Chief Inspector Collins' "almost paternal manner," is just common-sense, and we accept her story rather than the two Commissioners' conclusion on this point. That conclusion takes no account of human nature. We have put to a number of men and women engaged in various walks of life, many of them persons who would be regarded as firm-minded and not easily flurried, the question how they would feel in like circumstances, and they all admit they would feel some apprehension. The present writer, by no means frightened of the police in the ordinary way, would certainly be startled by a sudden summons to Scotland Yard from two police officers in a motor car. In fact, the police, although the police witnesses in the inquiry kept giving one another testimonials as "nice, kind" people, are considerably feared. The fear may be unreasonable; it has not been decreased by the necessity for this inquiry.

Miss Savidge gets to Scotland Yard, and is interviewed. Let us ignore her own evidence and take the police account. Here were a perfectly willing witness, an expert interrogator, a fast penman. Yet "the actual examination lasted a little less than three hours," says Inspector Collins. Miss Savidge, of course, puts it much higher. The statement was in evidence. It was not a very lengthy document, and in such conditions it could not possibly have occupied more than half that time in being related and recorded, allowing ample margin for all the subsidiary questions put to clear up each remark before

it took its final form. The police witnesses here definitely prove too much, and so their story becomes suspect.

They say Miss SAVIDGE never showed any signs of tiredness or exhaustion, and this is accepted by the majority Commissioners. One can only observe that under the friendly but prolonged examination of her own counsel, supported, as she was, by the presence of friends and sympathisers, she showed signs of weariness, and, after Mr. BIRKETT'S restrained and courteous cross-examination, she collapsed.

We need not follow Mr. LEES-SMITH in his condemnation of individual officers. They were merely exponents of a system which all three Commissioners alike condemn. "We consider," say the two, "that they are not to blame, because, *and only because*, they were following what is apparently the established practice at Scotland Yard, a practice which must be taken to be known to and approved of by those in higher authority than themselves." This is, of course, implied censure of the Commissioner of Police, for either he allowed the system to be developed, or he found it in existence and refrained from amending it.

We have not recited the more pointed criticisms by Mr. LEES-SMITH, thinking it better to see how far the police officers, and the system they represented, stand self-condemned, and how they affected the minds of the more lenient judges. But his report is carefully reasoned, is based on a fair selection of the evidence, and reinforces the impression of personal ability which is conveyed to a candid observer. He asks a number of very pertinent questions which it will be the duty both of the proposed Royal Commission and of Lord BYNG to examine with care. Satisfactory answers have to be found.

It is said by one set of scornful critics that the majority report is "soothing syrup." Read carefully, it is seen to contain much severe, if rather reluctant, criticism. It is said of the minority report that it is, at least in part, a political manifesto, but allowing for the possible bias which no man can escape, it offers a grave and pondered warning of a "peril to civil liberty," not lightly to be ignored.

The main issue involved in this inquiry will be before the public for a long time yet. The mere fact that it has been held, apart from any further effect, will clear the air, and strengthen the hands of the new Chief of Police in the absolutely essential task of restoring public confidence in the Metropolitan Police Force, on the only permanent basis of a justified belief, not only in its efficiency, but also in its fairness.

The Legal Aspect of Group Insurance.

By MR. GILBERT STONE, B.A., LL.B., Barrister-at-Law.

WITHIN recent years there has been developed, especially in America, a new form of insurance cover, which has features of very considerable social and legal interest. This form of insurance, known as group insurance, seeks to create an important similarity of interests and bond between employers and employed, by enabling an employer to insure his employees, either at the sole cost of the employer or on a contributory basis, for a given sum either expressed as a sum of money or in relation to annual wage earnings, which sum is to be paid in any given instance on the death of any particular employee to that employee's dependents, or is to be paid to the employee himself on the employee becoming totally disabled.

It will thus be seen that the person financially benefited by the insurance is not the assured but the employee of the assured. The contract, however, is between the office and the employer. The right to sue would accordingly be *primâ facie* in the employer.

A further important feature of group insurance is that while requiring a minimum number of employees and a minimum, though short, period of employment with the same employer before an employee can be accepted, the offices accepting this risk do not require a medical examination for an employee, and though they require a minimum and maximum age limit, such age limits are so widely spaced as to cover the whole normal working life from sixteen to sixty.

It is doubtless assumed, as a basis of the necessary actuarial calculations, that the average taken of a fair number of employees in employment, and, therefore, presumably reasonably healthy, is more or less the average of the ordinary man.

When the list of employees accepted is made up, each person appearing in that list receives a certificate from the office, which certificate states the terms of the insurance and the benefits payable. Such certificate is not an insurance, is not a contract, and is not stamped as such. It is presumably given to enable the employee to see what his rights are, and to furnish evidence which will enable the employee to exercise the important right next considered.

This right is the right which each employee has, on leaving his employment, to take out a life policy as a first-class life, according to the various tables published by the office in question (e.g., whole life, with or without profits, etc.), without medical examination. This, in relation to pension schemes, may be a right of very considerable importance both to the employee and to the employer, for it will be seen that an employee, otherwise entirely uninsurable, may, by this means, obtain late in life a life insurance on terms as favourable as those which he could demand on the assumption that he was a first-class life.

When one comes to consider the selection of employees for inclusion within the scheme, certain complications arise, for it will be apparent that if a contributory basis be determined upon, as the employees are in fact paying mainly, or in part, the premium, they must be given the right to decide whether they shall come within the scheme or remain outside it, and this would naturally result, if there is to be any high degree of selectiveness, in the unfit on the average coming in, and the healthy, as a rule, staying out, which would destroy the bases upon which the premium calculations are presumably made. Accordingly, in such a case, the office stipulates that a fairly high percentage of all the employees must come under the scheme. It is then a matter between the employees and the employer to determine whether sufficient employees are prepared to come forward in order to constitute the minimum percentage of all employees.

If, on the other hand, the employer pays the whole of the premium he can decide the classes of employees that shall be included.

As regards the *quantum* of benefit per person insured, it is obvious that it would throw out any possible premium calculation if those that were old were insured for a lot, while those that were young were insured for a little, for this would, in effect, result in shifting the average age several years forward. At the same time as a man becomes older his needs in the event of disability alter, and, accordingly, some variations in benefit, if practicable, may be considered desirable. Accordingly, the scheme provides that either all shall be assured for a like sum or that the sum insured shall vary in accordance with length of service. It is not permitted for the individual cover to vary at choice or according to what an employee may desire. A means of causing it to vary with the length of service is found in making the sum for which the individual is insured equal to one or more years wages according to the average of the preceding year.

However the sum in any particular case is determined, that sum is payable to that person or his dependents in the event of his becoming permanently disabled from all work as defined, or on death, and that sum is the amount for which that person may, on leaving that employment, claim to be insured as a normal life without medical examination.

This right to insure appears to be an absolute one. It is, for instance, exercisable although the employee is discharged from his employment because of ill-health and although he is known to himself, to his employer, and to the office to be an uninsurable life. It follows, of course, that he must exercise the option within a given time, otherwise this right would in effect be itself a continuing insurance without payment of premium, for on his death-bed he would be able to insure—the question of non-disclosure or concealment not apparently arising since the question of *de facto* health is irrelevant. This introduces, from the legal point of view, an interesting novelty into the practice of life insurance. The nicety of the position arises from the fact that it is a contract between A and B which appears to relieve C of the normal duty to disclose to A facts material to the risk. No precise analysis of the legal position would, however, be possible without a full consideration of the proposal and policy which in such circumstances the office tenders to C. It will of course be readily seen that an absence of medical examination *by itself* does not relieve C from the duty to disclose disease tending to alter the risk and known by C, but not by the office, to exist. The value of the right given to C depends to a considerable extent upon whether the office, in relation to C, waives disclosure of matters relating to health or merely waives a medical examination, leaving the customary burden upon C of disclosing every fact material to the risk or even requiring C to warrant truth of answers given to questions which questions may raise points as to health. Another feature of interest, though one that has already arisen in connexion with motor car insurance, is to be found in the fact that as a consequence of a contract between A and B valuable rights are conferred upon C, and the question will therefore arise to what extent C can compel performance, and to what extent, if at all, C has any cause of action against A, as distinct from a cause of action which C might have against B, to compel performance by A of that part of the contract that will result in benefit to C. Questions relating to insurable interest must also be glanced at, though it is considered that there can be little doubt that in the case put, there is a sufficient insurable interest in the employer to support the insurance in question.

The *quantum* of the premium varies, apparently, though this is a matter which differs according to schemes, and which is not quite clear with regard to any scheme, upon the average age for the group, the numbers in the group, and the variations in the group occurring within the year in question—the rectifying calculations being made at the end of the year in accordance with the variations (in the scheduled list of employed persons included) notified during the year.

In order, however, to consider the total charge on industry involved in a scheme of this nature, it may be of interest to observe that, assuming that everybody employed in an average undertaking, such as an engineering works, is included in the schedule, i.e., that there is no selection but that all persons employed are insured, and that the age average is normal, the total premium will be 1.125 per cent. of the total annual wages list. So, assuming that the annual wage list is £100,000 a year, the total annual premium will be £1,125.

That the scheme is one which has attractions for employers would appear to be shown by the fact that, in America, one insurance office alone has effected group policies to a value exceeding £130,000,000. Its merits, from a social point of view, would appear to be of the same order as those of pension schemes, and form a valuable means of filling in the gaps left in existing schemes of national insurance.

(To be continued.)

MARRIAGE SETTLEMENTS.

It may interest the profession to know that draft forms of Marriage Settlements, settled by Sir Benjamin Cherry, LL.B., are now on sale. They are published by The Solicitors' Law Stationery Society, Limited, 22, Chancery Lane, W.C.2, and branches.

A Conveyancer's Diary.

Report of the Chief Land Registrar.

The work and progress of the Land Registry is becoming a matter of increasing importance to conveyancers. Accordingly a brief analysis of the Chief Land Registrar's Report to the Lord Chancellor for the financial year 1927-1928 will be of special interest.

The work done at the Registry naturally divides itself into three branches, namely, Land Registration, Registration of Land Charges, and Registration of Memorials of Middlesex Deeds, and each branch of work is carried on in a separate department.

Land Registration Department.

The first noticeable feature of the work of the Land Registration Department is the great reduction in the time taken for registrations to pass through the office. In 1920 the average time taken for first registration was 24·8 days, in 1925 it was 10·8, in 1926 it was 15·4, while last year it was only 9·7 days. There has been a similar reduction in the average time for dealings with registered land from 10·9 in 1920 to 5·7 days last year. This cannot but strike a conveyancer as a remarkable achievement. The Chief Land Registrar explains at some length how this increased speed has been rendered possible and how adequate safeguards are provided so that the Department cannot truthfully be described as taking undue risks.

Another important feature brought out in the report is that there has been a gradual but steady reduction in the cost per case to the Department. In 1913-14 the average cost per case to the Department was £1 7s. 5d.; in 1919-20 it was £1 6s. 8d.; in 1926-27 it was £1 3s. 7d.; and the cost for last year is estimated at £1 3s. 5d.

In 1913 the number of first registrations was 7,147 and the number of dealings with registered land was 23,884. In 1926 the corresponding figures were 11,974 and 82,753 respectively, and in 1927 they were 10,935 and 95,218. An analysis of the figures for the last few years shows that the number of first registrations in compulsory areas tends to diminish every year, while the number of dealings continues steadily to increase. On the other hand, there is a steady increase in the number of first registrations in non-compulsory areas.

Thus the balance sheet shows a larger turnover at a reduced rate per unit notwithstanding the depreciation in the value of money.

The report throws here and there a little sidelight on both the policy of the Land Registry and the attitude of the legal profession towards registration of title. The Land Registrar realises that before registration of title can be accounted a practical success, the fees charged "must be kept at a level calculated to render dealing with registered land materially less costly than dealing with unregistered land." He can, accordingly, be relied upon to keep the fees down as low as it is practically possible.

The Registrar is also vigorously pursuing the policy foreshadowed in the Land Registration Act, 1925, of establishing fully state-guaranteed titles as the normal form of first registration. Further, nearly 7,000 partially guaranteed titles were in the course of the last year converted into titles with a full guarantee, that is to say, possessory titles were converted into absolute or good leaseholds.

On the other hand, "there is a tendency to use (the Land Registry) as a hospital to cure complicated and doubtful titles while withholding simple and sound titles from registration." The advantages of registering a difficult title to an estate about to be developed for building purposes are obvious. Naturally, the profession have not been slow to realise this.

It is reported that from the savings effected in all departments "£156,769 has been paid since 1925 for the redemption of the annuity of £11,970 on the site and buildings" of the Registry, and that an insurance fund of £133,000 has been built up

to which, it is anticipated, a further sum of £46,000 will be added for 1927-28. It may well be that when the fund reaches about £250,000 the amount to be set aside annually will be disminished; the consequence would be a further reduction in fees.

Registration in the Eastbourne compulsory area seems, from the Registry point of view, to be working satisfactorily. The practice whereby documents are forwarded to the London Registry (accompanied by a cheque) for the Registry to take the necessary steps to have the Inland Revenue stamps impressed, effects a substantial saving of time and labour.

Under an Order in Council, dated in March last, registration on sale becomes compulsory in Hastings after 1928.

Land Charges Department.

The following are the salient points from the report on the Land Charges Department.

The number of official searches made in 1927 was 400,446, and the number of personal searches 70,845, the corresponding figures for 1926 being 269,657 and 77,484. Thus it is obvious that the number of personal searches has diminished when the practical necessity for an official certificate was fully realised.

The average time taken throughout the year for the issue of official certificates has been eight and a half hours from the time of the receipt of the requisition for search to the time of the despatch of the certificate. This, in the normal case, means that if a requisition is received by the first post in the morning the reply is despatched the same day.

The fee for registration has been reduced from 2s. 6d. to 1s., and for a certificate of search from 5s. to 1s. 6d. per name.

It is surprising that only eleven substantive errors made by the department have come to light out of a total of 400,446 certificates issued. Notwithstanding errors, however, a certificate is conclusive evidence of the matters therein certified.

Middlesex Deeds Department.

The number of memorials registered in the Middlesex Deeds Department is 51,680—the highest figure since the register was established in 1709.

The average time taken for the issue of certificates of official search has been reduced to nine hours, and the fees have been reduced from 5s. to 2s. 6d.

As part of Middlesex is within the County of London, wherein registration of title takes the place of registration of deeds, one would have expected the work in the deeds registry to have diminished. Presumably its increase (relating to dealings in legal estate) is attributable to properties being split up for building purposes.

Landlord and Tenant Notebook.

Claim for New Lease under s. 5 of the Landlord and Tenant Act, 1927.

There are certain points in connexion with the right to a new lease under s. 5 of the Landlord and Tenant Act, 1927, which might usefully be considered.

Before the right to a new lease can arise the tenant must be in the position of being entitled to claim compensation under s. 4 of the Act in any event, s. 5 (1) being in the following terms:—

"Where the tenant alleges that *though he would be entitled to claim compensation under the last foregoing section*"—i.e., s. 4—"the sum which could be awarded to him under that section would not compensate him for the loss of goodwill he will suffer if he removes and carries on his trade or business in other premises he may in lieu of claiming such compensation at any time within the period allowed for making a claim under the said section serve on the landlord notice requiring a new lease of the premises, at which the trade or business is carried on to be granted to him."

As the same conditions are necessary in order to establish a right to a new lease, as to establish a right to compensation for goodwill, with the addition of course of other conditions as well as, for example, that the compensation that may be awarded under the Act would be inadequate, not only must the conditions which give a *primâ facie* right to compensation be present, but further that right must not have been defeated by the landlord by the offer of a new lease, cf. s. 4 (1) (*d*), or by the offer of a tenancy of other premises which will reasonably preserve to the tenant the goodwill of his business, cf. s. 6 of the Act.

The grant of a "new lease" under s. 5 is intended to meet cases where such compensation as the tribunal has the power to grant under the Act would prove inadequate (not cases in which no compensation, however large in amount, could adequately compensate the tenant).

There may be instances, therefore, in which by reason of the site value of the premises (s. 4 (1) (*d*) (ii), for example), or by reason of the fact that the premises are licensed premises (s. 4 (1) (*c*)), the amount of compensation that could possibly be awarded to the tenant might be extremely small. In such cases would the tenant be entitled to a new lease?

Opinions seem to vary on this point, and it has been suggested in some quarters that a tenant cannot possibly be entitled to a new lease under the Act, unless he can show that the compensation to which he would be entitled under the Act, would in any event be substantial in amount. From this view, however, we respectfully differ.

Judges are always drawing attention to the maxim that one must not read into an Act of Parliament words that are not and cannot be found there. The Landlord and Tenant Act, 1927, nowhere refers to the right to be awarded "substantial" compensation as a condition precedent to obtaining a new lease under s. 5, and all that the tenant is required to show in this respect according to s. 5 (1), is that "the sum which could be awarded him (under s. 4) would not compensate him for the loss of goodwill he will suffer if he removes to and carries on his trade or business in other premises."

There may of course be cases, in which a new lease would not be granted to the tenant, where the compensation which could be awarded him would be small, but the refusal of a new lease in such cases would flow, not from the fact that the compensation was small, but from the fact that the compensation, though small, nevertheless represented the loss of the goodwill which the tenant really suffered, and was, therefore, adequate in the circumstances.

The other points in connexion with a "new lease" will be considered in a subsequent article.

Our County Court Letter.

RESTITUTION ORDERS.

An example of what may be termed the auxiliary jurisdiction of the county court in criminal matters occurred at Birmingham County Court on the 6th June, 1928, in the case of *Evans* v. *Rafter*. The claim was for the delivery up of some gold and silver, the property of the plaintiff, which had come into the possession of the defendant in the following circumstances: In December, 1927, the plaintiff's shop was raided by the City police under a search warrant. An ingot of silver, 54 ounces in weight, and an ounce of gold were found on the premises, and it was alleged that these were the property of a company trading as bullion dealers in the same city. The plaintiff was subsequently committed for trial on a charge under the Larceny Act, 1916, of receiving the gold and the silver knowing them to have been stolen. At the Birmingham Quarter Sessions the plaintiff was acquitted by the jury, and he afterwards summoned Sir Charles Rafter, the Chief Constable, under the Police (Property) Act, 1897, and applied for an order for the delivery of the property to himself as the

owner. At the hearing the order was resisted on the ground that the company who had been prosecutors at Quarter Sessions were claiming the bullion, and the Stipendiary Magistrate ordered it to remain in the possession of the Chief Constable. The former prosecutors, however, took no further steps to establish their claim, and the plaintiff instituted fresh proceedings in the county court, with the Chief Constable as defendant. On behalf of the latter, notice of admission of facts was given, and he was not represented at the trial. The plaintiff's evidence was that he accepted the bullion last December, in payment off of a mortgage. His Honour Judge DYER made an order for the delivery up of the property, with costs, to be taxed.

In the converse type of case, where the criminal proceedings have resulted in a conviction, it may also be necessary to invoke the aid of the county court. The court before whom a person is convicted may order the restitution of stolen goods under several statutes, e.g., the Larceny Act, 1916, s. 45 ; the Pawnbrokers Act, 1872, s. 30 ; the Probation of Offenders Act, 1907, s. 1. The criminal court, however, is *functus officio* on the making of the order, and no means are provided either of enforcing compliance with or punishing disobedience of the order. The prosecutor must therefore have recourse to his civil remedy if the order of the criminal court is ignored, which is improbable if the goods are still in the possession of the police, but may be quite possible if the prisoner sold or pawned the goods before his arrest. The leading case is *Leicester and Co.* v. *Cherryman*, 1907, 2 K.B. 101, in which an agent of the plaintiffs was summarily convicted for larceny as a bailee of certain jewellery, which he had pawned with the defendant. The magistrates made an order under the Pawnbrokers Act, 1872, s. 30, for restitution of the jewellery to the plaintiffs, on their paying the defendant the amount for which the jewellery had been pawned. The plaintiffs did not comply with this order to redeem the pledge, but sued the defendant for the return of the jewellery or damages for its detention. The deputy county court judge at Greenwich gave judgment for the plaintiffs, but the defendant appealed on the grounds (1) that the magistrates' order for restitution rendered the matter *res judicata* ; (2) that the plaintiffs were estopped from claiming the goods except on the terms of the magistrates' order, viz., compensating the defendant. The Divisional Court rejected these contentions and upheld the judgment. Mr. Justice RIDLEY held that none of the Acts dealing with restitution of stolen property were intended to alter the civil rights of the parties. The plaintiffs were not estopped, as the restitution order was not applied for by them, but by a police officer. The learned judge observed, however, that the practice at assizes and quarter sessions was not to make a restitution order, where the circumstances required terms to be imposed, unless the prosecutor consents to compensate the third party in possession of the goods.

Correspondence.

The Organisation of a Solicitor's Office.

Sir,—I was considerably interested in your article on "The Organisation of a Solicitor's Office," Part I of which appeared in your issue of the 23rd inst.

I appreciate that it is impossible in an article to cover every point, but there are one or two that occur to me which do not appear in the part, but which may be useful.

(1) In respect of "Shorthand writers." Nothing whatever is said as to the typing speed of a solicitor's clerk, except that they should be able to type their work quickly. I have found by repeated tests that unless a typist can transcribe her shorthand at the rate of forty words a minute on a machine, she will be considerably behindhand at the end of each day. A good typist should be able to knock off sixty words a minute at least from her shorthand notes, and even improve on this speed on plain copying work.

(2) As to "Office hours." Your paragraph under that heading would tend to inspire a member of a solicitor's staff with the feeling that practically no overtime work was ever necessary. Obviously no solicitor can arrange affairs so that clients do not sometimes call in after 5 o'clock in respect of work necessitating letters or other matters which must be got off that night ; indeed, in industrial towns it is a common practice for solicitors to arrange that clients, who for any reason are unable to break time from their work or close their premises during the hours when the solicitor himself is in attendance, shall call in after their working hours, 5 p.m. or 5.30 p.m., and then transact their business.

I have tried one or two methods, but find there is no guarantee with any single method, that the staff shall get away promptly. The compromise which I have effected is that I endeavour to get away from the office by 5.30 and try not to trouble my staff in the morning until 9.30, thus giving them half an hour before I come or before I officially require them, in which to clear up odd matters they know will be wanted that day, and giving them half an hour in the evening after letters are signed. My staff have the privilege that, if all work that should be got off that night is finished at 5.30 p.m. they are at liberty to leave. In the general run of things, with suitable staff this usually means that overtime is counter-balanced with that extra half-hour, but to meet the whole situation, in addition I give suitable Christmas boxes and handle it in other ways. This meets the variations in character of members of one's staff. Some of those I have had would always have found it necessary to work overtime had overtime been subject to extra remuneration.

(3) "Letters." It is my practice with regard to keeping the postage book that all letters shall be signed for by the clerk who posts them or delivers them, and a very simple system of capital letters indicates at a glance all that is necessary about the getting off of the letters. A double money column cash book is used. Each day has its heading across the page, and after accounting for the stamps in hand, the letters are entered with the name and town, in the particulars and folio columns. That is, I believe, general practice. If the letter is a delivered letter, capital "D" is inserted in the narrower of the two date columns and the time of delivery, and the initials of the person delivering it are put in the other date column. This tells at a glance whether a person has received a delivered letter or not, before he interviews me, and sometimes that is important.

If the letter is a registered letter, a capital "R" is placed instead of the "D" while when an envelope is enclosed, the letter "E" is also placed in that column. If a letter is posted, the situation of the pillar box, and the time and initials of the clerk posting it are put in the appropriate column.

To write all this out makes it appear that the matter is very complicated, but in practice it does not turn out to be so, and amongst its advantages has often saved a clerk from reprimand when a client complained of not having received a letter, but the postage book showed exactly when and where the letter was posted, or if it was delivered, when it was delivered. The error has then shown to be that of the client's staff. In cases of notices by registered post, when it becomes necessary to prove the posting in court, it is easy to turn back to the postage book and find which clerk posted the letter and where and what time.

(4) As regards "engrossing." I am not quite in agreement with your contributor. I have found that what is known as black record ribbon is not quite so permanent as the name would indicate, and on a parchment substitute engrossment, typed with a so-called permanent record ribbon, the type is apt to fade in sunlight. This does not usually arise in a solicitor's office where deeds are filed in strong rooms, but can and does arise sometimes when the deed gets into

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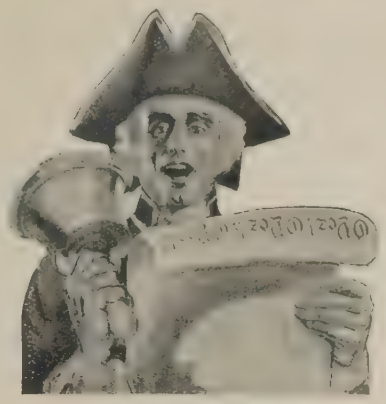

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the hands of a layman. Of course, in such cases, it only affects the endorsement, but it appears to me to be the duty of a solicitor to protect a thoughtless layman from any contingency of that nature. Has it not been said that "all laymen are fools" and must be regarded as such, "for if there were not, there would be no need for solicitors." I do not quite go so far, but one has to provide for even the veriest of fools in work such as that carried on by the profession.

(5) As regards "costs." I think the cheapest and easiest way for a solicitor is for each of his staff to keep a daily work-sheet, in one column entering the name of the client for whom work is done, and, in the other column, the exact work done or the 'phone message given by the clerk or by the client. The bookkeeper cashier can then enter up these items in date order on a "draft" bill, one of the principals or the manager ultimately going through the draft bill, amending it and preparing it for the typist to copy on the bill paper. Such entries must of course include letters entered up from the letter book by the clerk.

One criticism, and one only, occurs to me. Your article is essentially for solicitors. What is really needed is an article for "the staff," but of course the difficulty would be not what to put in, but what could be safely left out.

Bradford, JOHN TREWAVAS.
27th June.

[Our correspondent is thanked for his very interesting letter. It is proposed to discuss fully all the points raised in the correspondence later.—ED., *Sol. J.*]

Delays in Taxation.

Sir,—I was very interested in the letter from a "Practising Solicitor," and your editorial note on this subject. From what I know of the position I think it unlikely that all taxations can be completed before the Long Vacation even where papers have been lodged by the end of June. Might not the Lord Chancellor order the reference of such papers to the Vacation Taxing Master—and his assistants?

ANOTHER PRACTISING SOLICITOR.

Insurance under the Birkenhead Legislation.

Sir,—It does not seem to have occurred to the draftsman of these provisions that in debenture or debenture stock issues respectively, there is frequently a large amount of property not consisting of buildings which requires insurance in the full amount of its value.

For instance, a manufacturing business has perhaps a total insurable value of a million, and half a million of this is stock. What is the sense of insuring stock worth half a million to two-thirds of its value only. Assuming half of this stock were burnt, the effect would be that the insurance company would claim "average" on the loss and the security would be heavily depreciated. I understand there is no average on buildings, and it would be generally impossible to destroy the whole of a building. In settling a debenture stock trust deed I always point this out, but the statutory provisions ought to differentiate between "buildings" and "stock" and allow for insurance in the full amount of articles which can be totally destroyed and which are, if partially destroyed, subject to "average." E. T. HARGRAVES.

London, E.C.2.
26th June.

[Presumably Mr. Hargraves refers to the L.P.A., 1925, ss. 151 (1) (ii) and 108. By s. 108 (1) the amount of the insurance shall not exceed the amount specified in the mortgage deed, or, if no amount is specified, two-thirds of the full total required for restoration to *statu quo*. Possibly it would have been more convenient in a charge including stock and registrable under the Companies Act, 1908, s. 93 (1) (*c*), to provide that the insurance should be to full value. Still, it is to be noted that, under the Bills of Sale Acts, the arrangements as to insurance are not statutory, but made between the parties, and debenture-holders can always be properly protected, as suggested, in the covering trust deed. Most of the precedents of debenture trust deeds provide for full insurance.—ED., *Sol.J.*]

Statutory Tenants and the Landlord and Tenant Act, 1927.

Sir,—I was interested in the Article in your issue of 7th July, under the above heading.

The point you make—"definition of lease"—was however so obvious to me that I was much puzzled by the text book writers expressing any doubt about the matter.

Apart from statutory tenants—can the Act be said to apply to yearly tenants, monthly tenants, and weekly tenants, without written agreements or even with written agreements? I fail to see that either come under the definition of lease. Moreover the Rules made under the Act contemplate a lease.
16th July. A. M. T.

[The class of tenants referred to above clearly comes within the Act. "Lease" is defined as "a lease, underlease, *or other tenancy*," and further as including "*an agreement*" for a lease, underlease, tenancy or assignment. It is quite clear that the tenancy created by a *lease* may be a yearly, monthly or weekly tenancy, and it is equally clear that there may be tenancy agreements in writing (though not under seal), or even verbal, creating such tenancies. Such yearly, monthly or weekly tenancies might fall either within that part of the definition of "lease," which includes *agreements* for a lease, etc., or within the earlier part of that definition, which refers to *tenancies other* than a lease or underlease.—YOUR CONTRIBUTOR.]

Legal Parables.

II.

The Chamber Summonses.

THERE was once a solicitor who had long practised in conveyancing, but was without much experience of the courts. And there came an occasion when he had perforce to attend a summons in Chancery of much intricacy. And, believing (as, indeed, he should) that Chancery Masters were men of exceeding deep erudition and vast legal knowledge, he did not prepare himself by study of the practice of the courts, that he might explain the summons to the learned Master, but left it to the Master to puzzle out the facts as best he could (forasmuch as he was himself ignorant thereof). Whereat the Master was exceeding angry, and made rude remarks about the solicitor's ability, and adjourned the summons for someone else to attend who could explain the matter for the understanding thereof by the Master.

Now this made a deep impression on the solicitor's mind, and he vowed on oath that on the next summons he had, he would acquaint himself more fully with the practice before attending.

Wherefore, on the next occasion, which was a King's Bench summons for directions, he armed himself with the Red Book and the White Book, and Bullen & Leake, and Chitty's King's Bench Forms, and divers other volumes, and did proceed to dissertate to the bewildered Master in Chambers on the practice as to pleadings, the whole subject of discovery including interrogatories, and the difference between special and common juries, with a little extra discourse on official referees and their duties. And when the Master in Chambers had been brought to with burnt feathers under his nose, they led the earnest solicitor gently away, explaining to him how narrowly he had escaped the just punishment of his sins.

From which one should learn that while it is wise to acquire the knowledge of one's subject, it is wiser still to know when to refrain from expressing it. "BARON."

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.

Restrictive Covenants—Registration on Sale of Land in Plots.

Q. 1331. I act for builders A who have purchased a building estate from landowners B and are building small houses and selling to various purchasers C, D, E, etc. There are restrictive covenants imposed by B against A, and subsequent further restrictive covenants imposed by A against their purchasers. On 1st June, 1928, the day before the completion of the purchase of the estate, I searched against B and obtained a certificate "No subsisting entry." This was dated 2nd June, 1928. Acting for C, one of the purchasers from A, I searched against A and was given the certificate, copy herewith. It will be seen that this refers to Priority Notice and Land Charge D ii and D iii, which had apparently been registered after I had searched against the landowner on 2nd June, 1928. Acting for A, I registered, on Form L.C.4, the restrictive covenants in their favour. This was on 7th June, 1928 (copy herewith). Acting for C I searched and obtained the following return:—The search reveals the entry herewith, which is apparently my L.C.4 above. I am acting for a number of other purchasers D, E, F, etc.), who are each creating a building society mortgage (I do not act for the building society), and I am anxious to know whether it is necessary to carry out the registration on L.C.4 on behalf of A against each purchaser separately. The way the L.C.4 above was drawn seems to demand this, unless I can register the restrictive covenant in some way against all the several purchasers by one registration. If it is necessary to register separately how can I do it, as the date of the conveyance to each purchaser seems requisite. In the usual way this is filled in at the same time as the mortgage money is advanced (the latter being made the day after), and the date of completion is not always known in time to do all the above and assume the actual date and fill it in on the L.C.4. Is it necessary to register at all, seeing that the registration will hardly ever be used or called for as the restrictive covenants are fully set out in the deed (see copy herewith), and would be relied on rather than a registration certificate which, after all, conveys nothing without an explanation that it is the restrictive covenants?

A. This matter is dealt with in "Every Day Points of Practise," pp. 355-357. However inconvenient it may be, the new restrictive covenants imposed by your client on selling must be registered against each purchaser on or after the date of the conveyance. The registration should be before the date of mortgage or made in pursuance of a priority notice filed before the conveyance. It is not, however, necessary to repeat the restrictive covenants (if identical) on each registration. It is sufficient to say "As on L.C. No. 37765," if that is the registration number under which your covenants have been registered.

Husband and Wife—Compromised Divorce Proceedings—Separation Deed—Wife's Covenant not to ask for Increase of Allowance—Variation of Settlements—Finance Act, 1924.

Q. 1332. A and B are husband and wife living apart under a deed of separation entered into between them, whereby A covenanted to pay to B, *dum casta*, the weekly sum of £2 5s. per week for the maintenance of B and her two children by a former marriage. The deed of separation was the outcome of divorce proceedings commenced by B on the ground of cruelty and adultery by A, but the deed contained no recital to that effect, merely reciting that unhappy differences had arisen between the parties. A is still living with "the other woman," and supports her and her children by another man. B's two children are over the age of sixteen, and, apart from the agreement, A is no longer legally bound to provide for their support. The deed of separation, however, does not provide any age limit at which the payments are to cease in respect of the children, whom B is having educated and is supporting. The deed of separation contains a covenant by B that she will not apply for variation of the deed by asking for an increased allowance, but there is no corresponding covenant by A. A now threatens to apply for a variation of the deed by asking for the weekly allowance to be reduced on the ground that B has independent means and that he is no longer legally bound to maintain the two children of B who are over the age of sixteen. (1) Can A apply for a variation of the separation deed on the grounds stated above, with any prospect of success? (2) Can B apply, by way of counter-claim or otherwise, for an increased allowance with any prospect of success without exposing herself to any risk of an action for damages for breach of her covenant not to apply for variation of the deed? (3) Are the weekly payments under the afore-mentioned separation deed deemed to be by way of "compassionate allowance or other like allowance," within the meaning of s. 36 of the Finance Act, 1924, so as to exempt the receipt therefor from stamp duty on receipts for payments of over £2? (4) Does the fact that the deed of separation contains a "*dum casta*" clause debar either party from applying for variation of the deed?

A. As to (1) and (2): The jurisdiction of the court to vary a separation deed as a post-nuptial settlement only arises upon a decree absolute of dissolution of marriage: Divorce r. 71A. Here, the proceedings have not reached *decree nisi*, apart from the fact that A, who is the guilty party, cannot petition to vary and can only oppose a petition filed by B, the innocent spouse. A is therefore bound by the terms of the deed, and, in the absence of express limitation, there is no age limit at which the payments in respect of the children will cease. If B, owing to A's improved financial position, would be better off under an order for permanent maintenance, based on one-third of A's and B's joint incomes, there is nothing to prevent B instituting fresh proceedings for dissolution against A, based on his present adultery, which could not be said to have been condoned by the deed, apart from the fact that the deed does not contain a *Rose* v. *Rose* clause, and B's covenant not to ask for an increased allowance will not prevent her from filing a petition for permanent maintenance. See *Hyman* v. *Hyman and Hughes* v. *Hughes*, 72 Sol. J. 435. As to (3): No. As to (4): This consideration would only arise in the case of a wife found guilty of adultery. If the deed contained a *dum casta* clause the liability will cease on *decree nisi*, if no *dum casta* clause, the liability under the deed will continue after dissolution until varied by the court on petition.

Agricultural Holdings Act, 1923—Validity of Valuation in absence of Arbitration—Jurisdiction of County Court.

Q. 1333. A, let to B two closes of land under a verbal agreement, and A gave notice to B to quit the same, the latter giving up possession on the 25th March, 1927. B is now claiming for tenant right valuation the sum of £30, and the particulars are as follows: Five-acre wheatfield, sown with oats after new seeds, ploughed down,

sown with wheat, 50 tons of manure applied to wheat before sowing, five loads of wheat washed; allowance is made for ploughing, sowing, manure, spreading, harrowing wheat and dressing. Six-acre cabbage field, 3 acres sown with cabbage 1926, 36 loads of manure applied to cabbage. Three acres sown with oats 1926, 20 loads of yard manure applied, fish manure applied cost £9; claim for ploughing 5 acres. B gave notice to A to appoint a valuer, but A ignored the request and an independent valuation was made. In March last B instructed his solicitors to apply to A for the payment of the amount of the tenant right valuation, namely £30. We applied to B's solicitors for particulars showing how the valuation was made up, but they only gave the information set out above. We again wrote B's solicitors, pointing out that although they had written threatening proceedings, in default of payment, in the county court, the latter had no jurisdiction, and that the matter must be settled by arbitration under the Agricultural Holdings Acts, at the same time requesting them to submit two names for the selection of an arbitrator, which they ultimately did. Our client did not approve of either name, and instructed us to request B's solicitors to submit three further names. This letter we wrote in March, pointing out to B's solicitors that their client had left the land in a very foul condition, and that our client had several times drawn their client's attention to the fact that the land was deteriorating and that he would claim compensation. This we contend was sufficient notice within the meaning of s. 10 of the Agricultural Holdings Act, 1923, so that our client would have a *bonâ fide* claim for deterioration of the land. Nothing further was done, and the matter was allowed to lay dormant until about a week ago, when B's solicitors rang us up on the telephone enquiring whether we would accept service of a summons on our client's behalf. We wrote them the same day re-iterating that the county court had no jurisdiction in the matter of their client's claim, and that it must be settled by arbitration under the Agricultural Holdings Acts, and pointing out that if they still persisted in litigating the claim in the county court we should strenuously oppose the proceedings, and would accept service. The summons was served personally on our client. We submit that the county court has no jurisdiction to deal with this agricultural claim, and that it must be settled by arbitration under the Agricultural Holdings Act, 1923, and furthermore that our client has a *bonâ fide* claim for deterioration of the land. We propose filing a notice of defence under Ord. 10, r. 9, of the County Court Rules, 1923 to 1926, as well as a counter-claim for deterioration. We shall be glad, however, to have your opinion as to whether we are right in our contention, and if so, as to the advisability of filing a defence under Ord. 10, r. 9, as well as a counter-claim.

A. The questioners are right in their contentions, as although it would have been open to the parties to proceed by valuation according to custom, the fact that the landlord did not appoint his own valuer rendered an arbitration necessary. The independent valuation was therefore void, and the county court has no jurisdiction to enforce payment of the amount thereof as a debt. On the failure to agree, either party can apply to the Minister of Agriculture to nominate an arbitrator, under the Second Schedule to the Act of 1923, para. 1. Assuming that the questioners' letter in March was written before the 25th, it would be a sufficient notice within s. 10 of the Act. The notice of defence should be filed as proposed, and at the trial it should be submitted (either on preliminary objection or at the close of the plaintiff's case) that there is no case to answer, and that judgment should be given for the defendant. For the same reason, i.e., that no cause of action has yet arisen, no counter-claim should be filed, as the amount to which the landlord is entitled for deterioration must first be fixed by an arbitrator's award. An action for that amount can then be brought either in the county court or the High Court, if over £20: See *Horrell* v. *Bletso*, 72 Sol. J. 394.

NOTES OF CASES.

Court of Appeal.

Re **Ducker's Trade Mark.**

Lord Hanworth, M.R., Lawrence and Sankey, L.JJ.

28th and 29th June.

Trade Mark—Registration—*Bonâ fide* User or Intention to Use—Failure to Use—Removal from Register—Trade Marks Act, 1905, 5 Edw. 7, c. 15, s. 37.

In 1924 D registered the invented word "Notox," as describing certain hair dyes manufactured according to a process which she claimed to have invented. Her husband and his brother had been interested in the manufacture of hair dyes, but had been prosecuted for attempting to defraud the revenue, and it appeared from the evidence that D had registered the mark "Notox" with the idea that she might start business with it if she were thrown upon her own resources, and that she did not intend to exploit the manufacture and sale of "Notox" herself, but to put it upon the market through a limited company, "Notox Limited," which was formed for the purpose and registered in 1927. The applicants moved the court to order that "Notox" should be expunged from the register, on the ground that it infringed s. 37 of the Trade Marks Act, 1905, which directs that a mark may be removed "on the ground that it was registered by the proprietor, or a predecessor in title without any *bonâ fide* intention to use the same in connexion with such goods, and there has in fact been no *bonâ fide* user of the same in connexion therewith . . . unless . . . such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods." D and "Notox Limited" contended that that did not indicate an intention to use immediately. Tomlin, J., decided, following *Re Batts Trade Marks*, 1898, 2 Ch. 432, that to avoid the operation of the section there must be a "definite and present intention of using, which D had not had, and, further, that that should be the intention of the proprietor of the mark, and the intention of 'Notox Limited' was not sufficient." He therefore ordered the removal of the mark.

D and "Notox Limited" appealed.

The Court of Appeal adopted the conclusions of Tomlin, J., and dismissed the appeal.

Counsel: *Rudolph Moritz*, K.C., and *F. E. Bray*, for the appellants; *Hon. Stafford Cripps*, K.C., and *Lionel Heald*, for the respondents.

Solicitors: *Macdonald & Stacey*; *Drake, Son & Parton*.

[Reported by G. T. Whitfield-Hayes, Esq., Barrister-at-Law.]

High Court—Chancery Division.

F. Reddaway & Co. *v.* **Hartley.** Romer, J. 22nd June.

Practice—Further Affidavit of Documents—Order XXXI, r. 19, A (3).

This was a summons for discovery. The action was started by the plaintiffs against the defendant for an injunction to restrain him from passing off goods not being of the plaintiffs' manufacture, as being the plaintiffs' goods. The plaintiffs were not satisfied with the defendant's affidavit of documents, and applied to them for a further and better affidavit and alternatively for an order under Ord. XXXI, r. 19 A (3), in respect of certain classes of documents. This was refused, and an application accordingly made to the master. The master refused to make an order for a further and better affidavit of documents, expressing the view that having regard to Ord. XXXI, r. 19 A (3), it was not now the practice to order a further and better affidavit of documents.

ROMER, J., after stating the facts, said: It is clear that certain material correspondence has not been so far disclosed by the defendant. In these circumstances, but for Ord. XXXI, r. 19 A, it would follow that a better affidavit of documents should be ordered, because it appears that the defendant has taken an erroneous view of his obligations. It has been argued on his behalf, that, having regard to this rule, it is no longer open to the plaintiffs to come forward and ask for a further and better affidavit of documents, but that they are confined to the procedure laid down by the rule. In the case of *British Association of Glass Bottle Manufacturers Ltd.* v. *Nettlefold*, 1912, 1 K.B. 369, and 1912, A.C. 709, the very point is disposed of in the Court of Appeal, subject to this, that r. 19 A was not altogether in its present form. It was then confined to specific documents and had not been extended to any class or classes of documents. The alteration of the rule, however, does not render the observations of FARWELL, L.J., in that case any less applicable than before. The rule gives certain rights to parties which they had not had formerly, and I can not read it as interfering with rights which had been previously conferred upon them. The order will accordingly be made in the terms of the first part of the summons, that the defendant shall file a further and better affidavit of documents.

COUNSEL: *Moritz*, K.C., and *K. E. Shelley*; *B. Drewe*, *Trevor Watson*.

SOLICITORS: *W. J. & E. H. Tremellen* for *Blair & Seddon*, Manchester; *Denton, Hall & Burgin*.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Burnard & Algers Ltd. *v.* Richard Player & Co.

Roche, J. 10th July.

SHIPPING—BILL OF LADING—CARGO DAMAGED—PERILS OF THE SEA—UNSEAWORTHINESS—LIABILITY OF SHIPOWNER.

The plaintiffs in this action, as indorsees of a bill of lading dated the 24th December, 1927, and incorporating a charter-party of the 20th December, 1927, claimed from the defendants £1,250 in respect of a cargo of potash salts and muriate of potash, shipped, as they alleged, in good order and condition on the defendants' steamer "Taycraig," for carriage from Antwerp to Plymouth, and which they said was delivered partly short and partly damaged by water. The defendants denied the damage or that the goods were shipped in good condition, and relied on the exception clause in the charter-party; "The Act of God, perils of the sea and other accidents of navigation excepted," and pleaded that the damage, if any, was due to perils of the sea in that the ship's hatch covers were displaced in heavy weather. The plaintiffs denied extraordinary weather, and said that the vessel was unseaworthy in that she was without a chief officer and second engineer on leaving Antwerp, the former missing the ship by getting lost, the latter being subsequently found drowned.

ROCHE, J., said that the exceptions clause was subject to the provision that the vessel must be seaworthy when sailing on the voyage, and also it did not protect the shipowner from the negligence of the master and crew; for those reasons the clause was not a good one from the shipowners' point of view. The question was whether the wedges fastening down the hatch tarpaulins had become displaced by reason of the heavy weather or because they were not properly secured when the voyage began. He did not think that the weather was exceptionally violent, and was of opinion that the wedges were not made, or were not kept, fast. The sailing without a mate in the circumstances constituted unseaworthiness. Judgment for the plaintiffs, with costs.

COUNSEL: *G. P. Langton*, K.C., and *Lewis Noad*, for the plaintiffs; *Le Quesne*, K.C., and *Cyril Miller*, for the defendants.

SOLICITORS: *Waltons & Co.*; *William A. Crump & Son*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Morelli *v.* Fitch and Gibbons.

Acton and Branson, JJ. 12th July.

SALE OF GOODS—GINGER WINE—BOTTLE NECK BREAKS WHEN OPENING—INJURIES TO HAND—IMPLIED WARRANTY CLAIM FOR DAMAGES—APPEAL—SALE OF GOODS ACT, 1893, 56 & 57 Vict., c. 71, s. 14 (2).

Appeal from a decision of the Edmonton County Court judge. The plaintiff, on the 21st January, 1928, purchased a bottle of Stone's ginger wine from an off-licence shop of which the defendants were licensees. In endeavouring at home to remove the cork by means of a cork-screw his left hand was severely injured through the neck of the bottle breaking away, and in an action for damages it was held by the county court judge that the bottle was bought by description, and that it was not of a merchantable quality, there being a defect in it rendering it unsuitable for the purpose for which it was employed. He gave judgment for the plaintiff and assessed the damages at £21. The defendants appealed.

ACTON, J., said that the question to be determined arose under s. 14 (2) of the Sale of Goods Act, 1893, which enacts that when goods are bought by description there is an implied condition that they shall be of merchantable quality. After referring to the authorities, his lordship said that it was clear that the sale had been one of goods by description. In those circumstances it appeared impossible to say that the county court judge was wrong in deciding that there had been a breach of the implied condition of warranty as required by s. 14 (2) of the Act. It was also clear that the judge in the court below had found that the plaintiff could not have found the defect in the bottle by any reasonable examination. Appeal dismissed.

BRANSON, J., concurred.

COUNSEL. *Sir Reginald Mitchell Banks*, K.C., and *E. T. Rhymer* for the appellants; *F. Soskice* for the respondent.

SOLICITORS. *Avery, Son & Fairbairn*; *Palmer & Robinson*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

The Law Society.

ANNUAL MEETING.

The annual meeting of The Law Society took place on Friday, the 6thinst., the chair being occupied by the outgoing President (Sir Cecil Allen Coward, LL.D.). Those present included the Vice-President (Mr. Robert Mills Welsford, M.A., LL.B.), and the following members of the Council: Mr. Charles Edward Barry (Bristol), Mr. Ernest Edward Bird, Mr. Harry Rowsell Blaker (Henley-on-Thames), Mr. Lewin Bampfield Carslake, Mr. George Dudley Colclough, B.A., LL.B., Mr. Alfred Henry Coley, LL.D. (Birmingham), Sir Robert William Dibdin, Mr. Hubert Arthur Dowson (Nottingham), Mr. Bernard Harpur Drake, C.B.E., Mr. Richard Farmer (Chester), Mr. Walter Henry Foster, LL.M., Mr. Douglas Thornbury Garrett, B.A., Mr. William Waymouth Gibson, B.A., LL.B., Mr. Dennis Henry Herbert, M.A., M.P., Mr. Leonard William North Hickley, Mr. Randle Fynes Wilson Holme, B.A., Mr. Charles Mackintosh, LL.D., Mr. Charles Gibbons May, Mr. William Egerton Mortimer, M.A., Sir Charles Henry Morton (Liverpool), Sir Arthur Copson Peake, LL.D. (Leeds), Mr. Richard Alfred Pinsent, M.A. (Birmingham), Sir Reginald Ward Edward Lane Poole, B.A., Mr. George Stanley Pott, B.A., Mr. Harry Goring Pritchard, Mr. Samuel Saw, and Mr. John James Withers, C.B.E., M.A., M.P.; Mr. E. R. Cook (Secretary) and Mr. H. E. Jones (Assistant Secretary).

PRESIDENT AND VICE-PRESIDENT.

Mr. Robert Mills Welsford (Messrs. Biddle, Thorne, Welsford and Gait), was elected President, and Mr. Walter Henry Foster (Messrs. Milles, Jennings, White & Foster), as Vice-President for the year ensuing.

Mr. WELSFORD, in returning thanks, said that to be elected President of The Law Society was undoubtedly the greatest honour which could be bestowed upon anyone in the solicitor branch of the profession. He trusted he would be able to maintain the high traditions of the Society and of the office.

Mr. FOSTER also briefly returned thanks.

VACANCIES ON THE COUNCIL.

There were twelve vacancies on the Council, ten of which were caused by the retirement in rotation, and two by the resignation of Sir Herbert Gibson, Bt., and Mr. B. A. Wightman (Sheffield). The following had been nominated to fill the vacancies: Mr. George Dudley Colclough, Mr. Alfred Henry Coley, LL.D. (Birmingham), Sir Cecil Allen Coward, LL.D., Sir Robert William Dibdin, Mr. William Alan Gillett, Sir John Roger Burrow Gregory, Mr. Randle Fynes Wilson Holme, Mr. Charles Mackintosh, LL.D., The Rt. Hon. Sir Donald Maclean, K.B.E., P.C., LL.D., Mr. William Egerton Mortimer, Mr. William Radcliffe Philpot, Mr. Harold Nevil Smart, C.M.G., O.B.E., Colonel William Mackenzie Smith, D.S.O., T.D. (Sheffield), and Mr. Walter Mantell Woodhouse.

The PRESIDENT said that one of the candidates (Mr. Smart) had withdrawn his nomination, but as there still remained thirteen candidates and there were only twelve vacancies, it would be necessary to take a poll of the members. He therefore appointed Thursday, 19th July, at 2 o'clock, for a general meeting to receive the report of the scrutineers. The following members of the Society were appointed scrutineers: Mr. G. S. Macquoid, Mr. G. E. Lewis, Mr. D. H. Harrison, Mr. C. E. Pridham, and Mr. A. J. Pidduck.

AUDITORS.

The following were re-elected auditors of the Society's accounts for the year ensuing: Mr. John Stephens Chappelow, F.C.A., Mr. James Curzon Mander and Mr. George Grinling Harris.

ACCOUNTS.

The PRESIDENT moved the adoption of the accounts of income and expenditure, which, he said, showed on the Society's account a balance of income over expenditure of £1,936 1s. 11d., and on the articled clerks' account a balance of income over expenditure of £5,467 15s. 11d.

Mr. L. W. NORTH HICKLEY (Chairman of Finance Committee) seconded the motion, observing that the accounts presented a satisfactory balance in each section, the Society's account and that of the articled clerks' fund. The total income of the Society's account, viz., £41,926 5s., was practically the same as in 1926, and the expenditure was within a few hundreds of the amount expended last year. On the income side there was a small increase, owing to the number of members of the Society being a little in excess of the number in the previous year, and there was also an increase in the admission fees and in the fees from the honours examination, while the income from investments was some £200 higher than in the preceding year. There was, however, a decrease from the letting of arbitration rooms, owing to the greater demands of the Society's Law School, while the grant from His Majesty's Government for discipline purposes was £500 less than in the previous year. On the expenditure side "depreciation on buildings" appeared at the usual figure of £3,000, whereas in 1926 an additional £3,000 was charged, owing to the omission of any depreciation in the year 1925. The chief increase on the expenditure side occurred in "Law and Parliamentary Expenses, including costs allowed by committee under Solicitors Act, 1888, and proceedings with reference to important measures in Parliament," £1,923 15s. 4d., which was £700 higher; while the cost of "Entertainment Expenses" appeared for the first time. This was set down at £933 13s. 4d., and the item was followed by the entry "Less paid by members of the Council and selves and guests, £294." He had thought it advisable to make a separate item of this charge, as two largely attended dinners had been held, at which there were many guests of the Society, and it was the intention of the Council to resume the old custom of holding two dinners each year in future. He thought it only right to say, as he believed there was some misapprehension on this point, that the members of the Council paid for their own dinners on these occasions and for those of their individual guests. It had been thought right to enter this item on the accounts because the Council had been frequently told that they were enjoying themselves at the expense of the Society, and he thought it was time that the members of the Society realised that that was not the fact. The members of the Council did not desire to enjoy themselves at the expense of the Society, and they did not do so. The charge relating to the dinner covered the expense of decorating the hall and making it suitable for the purpose of the dinner. It also included the cost of the official guests. It would be realised that in the course of the year the Council entertained a very large number of His Majesty's judges, the Lord Chancellor, the Archbishop of Canterbury, and many other very distinguished people, and he was sure the Society would not begrudge the necessary expense. It must also be realised that the President of the Society received hospitality on behalf of the Society on many occasions. Another item which appeared in the account for the first time was, "Depreciation in securities, £975 17s. 1d." That depreciation was on securities which the Society owned previous to 1914. It arose in the India stock and Canadian Government stock, and none of the members would be surprised to see that there had been a heavy depreciation in those stocks. All investments now appeared on the account at cost, or at their present market value, whichever was the lower. With regard to the articled clerks' account, the income showed a considerable increase, which was largely due to the number of candidates for the Society's examinations, and the expenditure which had increased was due to the additional fees paid for tutors owing to the increased number of students attending the Society's school and the additional expense of providing schools all over the country. The income from the "New Inn and Clifford's Inn account" had been allotted in the same way as last year. The balance sheet showed the finances of the Society to be in an entirely satisfactory condition, the only real liability being the usual running accounts not actually paid before the end of the year, and as against these were arrears of members' subscriptions on the other side. He had to thank Mr. J. C. Mander and Mr. G. G. Harris, the hon. auditors, for the trouble and care they had taken in their audit. They particularly wished it made clear that, though they had done their best to check the figures, it was impossible for them to accept responsibility for the allocation of income and expenditure to the headings of these accounts, viz., "Society and Articled Clerks' Fund"; but they relied on Mr. Chappelow, the professional auditor, that these were properly dealt with. He (Mr. Hinckley) had endeavoured to satisfy them as far as might be on such points as they had raised, and he thought he might say that as the accounts appeared in the report that showed the true state of the Society's finances, which he could not think the members would find unsatisfactory. He was personally very grateful to the hon. auditors, to Mr. Chappelow, and to Mr. Ryall, the Society's cashier, for the assistance they had given him.

Mr. EDWARD A. BELL thought the Society was to be congratulated on the financial state of its affairs. He wished to ask a question of which he had given the Secretary notice. Mr. Hickley had given an explanation of some of the Society's expenses, and he would like to know some particulars of the entertainment given at the Society's Hall in March to a club whose name he did not propose to mention, but whose paraphernalia appeared to be clay pipes and oranges and lemons. He conceived he was correct in the belief that every member regarded the extension of the Society's hospitality with lively satisfaction, but he should like to know whether this particular entertainment was at the expense of the Society. Then, so far as he could appreciate from the Society's previous annual financial statements, there was a sum of £24,500, representing the total of the balances of income over expenditure since the year 1923. The value of the investments since that date was £30,458. Out of what fund had the difference been obtained? He refrained from contrasting the proportions of the amounts applied by the Society to charity with that applied to entertainments, but he noticed that there was a subscription towards the restoration of an ecclesiastical fabric, and he ventured to ask what amount had been given by the Society in hospital subscriptions. The upkeep of hospitals was a national concern, and it behoved the Society to support them as a public duty.

Mr. HINCKLEY said in reply that as far as regarded the entertainment to which Mr. Bell had referred, the Society had been at no expense in that connexion. A well-known member of the Society asked the Council whether he might use the common room for an entertainment connected with a local charity in the immediate neighbourhood, and the Council gladly acceded to his request. The charity was a very old-established benevolent society in the Law Society's own parish. He did not think the members would complain of that or of the money that was given by the Council in charity. The Society did help to support four hospitals, and if the Council felt that it was the wish of the members that they should spend more of the Society's money in charity, he could assure them the Council would be only too delighted to do so. But they did hesitate before replying in the affirmative to a certain number of requests which they received, because they did not think it was quite within their province to do so. The members were quite right in watching the amounts that were spent in charity as well as in entertainment. But the Council thought it was their duty in the interest of the Society to give the dinners, to entertain people who had entertained them, and the distinguished guests whom they thought the members would wish to come to the Society's Hall. If the members were to say it was their wish that the Council should spend more money in charity he did not think they would find the Council backward in doing so. The other question asked by Mr. Bell was how the Society got their large invested fund. As he said, a considerable sum came from excess of income over expenditure, and the reason the two figures could not be made to balance was that by

means of depreciating the building from time to time and the furniture and the fixtures, a fund was built up to which the Council looked to meet any extraordinary expenses there might be in the future. He might say that it looked as if it would be necessary to spend £5,000, and perhaps more, upon the building during the present year. The expenditure would be chiefly on the outside of the building. The Council proposed to clean the building, but the stone was perishing in some places and a good deal of money would have to be spent in that respect. Of course the idea of depreciating the building in the accounts was to create a fund upon which to fall back when needed. The electric lighting had not been altogether satisfactory and a good deal of money would have to be spent in entirely renovating and remodelling it.

The PRESIDENT said he believed that the members would agree that a great debt of gratitude was due to Mr. Hinckley, for doing so much in his capacity as treasurer.

The motion for the adoption of the accounts was carried unanimously.

POOR PERSONS PROCEDURE.

Mr. P. HARRINGTON EDWARDS said he was happy to congratulate the Council on their report, particularly the part of it which dealt with the procedure under the Poor Persons Procedure. The report referred in particular to the second and final report of the departmental committee under Mr. Justice Finlay's chairmanship. The report of that committee dealt, as was stated in the Council's report, with the availability of legal advice generally and of legal aid in county court cases. The Council's report continued: "The majority of the committee expressed the opinion that it is most desirable that legal advice should be provided for the poor, and that 'Poor Man Lawyers," should be strengthened, developed and extended. As to legal proceedings the committee thought that poverty does not prevent the litigation of any appreciable number of claims, and that there was no need to extend the poor persons procedure to the county court, except when a High Court case has been remitted there. These findings of the committee are in accord with the evidence tendered by the Council." That had always seemed to him a great mistake, and he had wondered how a body such as was the committee could have come to such an extraordinary conclusion as that at which they had arrived. He hoped it would not go forth that that was the view of the Council and of the members of the Society. Many of those present had not had experience in the county courts, but those who had knew how desirous it was that poor persons should be assisted there. Some of the cases that came before those courts were most difficult. He did hope it would not go forth that it had the approval of the Society that no relief in the county court should be given to the poor. He should be glad to know who gave evidence on behalf of the Council.

Mr. A. H. COLEY (Birmingham), a member of the departmental committee, thought it was not for him to object to Mr. Edwards' description of the committee as a highly sensible body. He thought they showed they possessed that quality by the report they issued with regard to the extension of the Poor Persons Procedure to the county courts. But the evidence that was given on behalf of the Society was so given by Mr. Cook, the Society's secretary. He (Mr. Coley), had the opportunity of seeing the lines upon which that evidence was proposed to be given, and he would take the liberty of saying that he thought it represented the judgment of the Council upon the subject. It was given with great particularity and a great deal of detail, and it was such that the committee unanimously adopted the recommendations made, which indicated, he thought, that the evidence was regarded as being of great weight. Mr. Edwards said he had great experience of county court practice. Many of the members of the Council had had experience of the county court, and many who were not to-day disconnected with the law knew how truly impossible it was to promote a scheme which would enable every litigant in the county court to have the assistance of a solicitor. He suggested that they should wait for the development of the scheme in the High Court, and a deeper interest of solicitors in it, then perhaps some county court scheme might be devised. It was not easy to day to get the solicitors to do the work of the High Court and he was perfectly certain it would be impossible to get them to extend it to the county courts. Many of the cases in the county courts—the majority of the cases—were small debt cases which required no legal advocacy. It could not be expected that solicitors could be got to undertake such cases. He felt certain it would mean a vast extension of the work of the county courts, which was even now difficult to deal with in the recognised time, and would become almost impossible. He suggested that they should get their members in Parliament to take an interest in the subject. Then if any scheme should be invented for the assistance of poor persons in the county courts it might be considered. But it did not seem to him to be practicable.

Mr. EDWARDS observed that he had not suggested that the poor persons procedure should be wholly applied to the county courts, but that litigants with incomes of under £2 a week should at least be relieved from the payment of court fees.

Mr. COLEY replied that that was a matter entirely for the Treasury. In the present state of the national finances the Treasury was hard to move in a matter of that sort, and it would probably be useless to appeal to them in such a case.

LADY MEMBERS.

Mr. BELL said that the Council's report dealt with a succession of facts and beatitudes, and could almost be regarded as an ode to posterity which might, or might not, reach the address. He observed that there were some omissions in it; amongst others, there was no reference to their forensic sisters, who had now become an established entity. He felt assured that every member of the Society welcomed their advent into a sphere to which natural justice of their abilities—and they were many—justified their entry into what some brilliant women considered their special sphere of usefulness.

YOUNGER MEN WANTED.

Another matter might come within the area of the consideration of the members of the Society—it had been raised in the general meetings more than twenty years ago. He referred to the age limitation of the members of the Council.

Mr. BELL said that it was necessary to consider the benefit of both sections, the ladies who desired to sit by themselves and the ladies who did not so wish.

PROVINCIAL MEETING PAPERS.

Mr. BARRY O'BRIEN said he had never attended any of the provincial meetings of the Society, but this year the meeting was to be held at a place which was more attractive than was sometimes the case, and he hoped to get there. He thought it would be of great advantage if the subjects of the papers to be read and discussed were communicated to the members much earlier than was at present the practice, thus following the custom of the medical and other societies in connexion with their yearly congresses. The importance of the matters dealt with rendered this very desirable.

The SECRETARY said it was the custom to issue the programme of proceedings of the meeting about a fortnight or three weeks before the meeting took place, and it appeared in the weekly legal newspapers. There was a practical difficulty in publishing it at an earlier date because the members who were so kind as to read papers were often so busy that they found it difficult to make the time to finish them. It was a practical impossibility to say how the Council could tell the writers that they must send the papers in earlier. Sometimes it was very late before the papers were received by the Council. They had then to be considered in order to state definitely that they would be read.

The motion for the adoption of the report was carried unanimously.

THE NEW PRESIDENT.

Mr. WELSFORD is M.A., LL.B. (Cambridge). He was articled on the 20th October, 1882, for the term of three years to the late Mr. Joseph Addison, of Walbrook. He was admitted in November, 1885, and from 1885 to 1892 practised alone. From 1892 to 1905 he was a member of the firm of Thorne and Welsford, which in that year became Biddle, Thorne, Welsford & Sidgwick, and in 1913 Biddle, Thorne, Welsford and Gait, of Aldermanbury. He has been a member of the Council since 1910, and was Vice-President in 1927-1928. He has served on the Compulsory Membership Committee, House Committee, Professional Purposes Committee and Legal Education Committee, of which he was chairman for several years, and he was the representative of the Council on the Students' Rooms Committee.

EMBARRASSING FOR THE JUDGE.

A prisoner at the Old Bailey said he thought he was guilty of stealing, because he received stolen goods. "It's like this, my lord. Suppose you stole something——"

Judge Atherley Jones: That has yet to happen. (Laughter.)

Prisoner: But suppose you did, and I got it from you afterwards.

The Judge: I won't discuss it with you. I might get embarrassed.

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Legal Notes and News.

Professional Partnerships Dissolved.

HUGH ROBSON SADLER, CUTHBERT RICHARD CALLARD, and KENNETH VERE DOLLEYMORE, Solicitors, 3, St. James-street, S.W.1, (Richardson Sadlers and Callard), by mutual consent as from 30th June.

HENRY SUTTON LUDLOW and HARRY PLOWMAN, Solicitors, 2, 6 and 7, Broad-court-chambers, Covent Garden, W.C.2 (King and Ludlow), by mutual consent as from 30th June. The business will be carried on in future by H. S. Ludlow in partnership with Gordon Kenneth Wright, under the style of Ludlow Wright & Co.

WILLIAM FOWLE and JOSEPH HUNT (Fowle and Hunt), Northallerton, Solicitors, as from 14th June, by mutual consent, the said W. Fowle retiring from the firm. In future the business will be carried on by J. Hunt alone.

OBSCURE STATUTES.

Mr. Justice Rowlatt has made some further comments in the King's Bench Division upon the obscurity of the language of tax legislation. Addressing the Attorney-General, on the 29th ult., he said that in his recent remarks he was not complaining of the complexity of the Income Tax Acts, but was drawing attention to the system of drafting.

"That system," he said, "seems to be this. When a section has to be recast, instead of recasting it they reprint it on about five pages doctored by references, so that anybody wanting to study it must compile for himself a new edition with great labour and skill. It cannot be controverted that that method gives the draftsman greater trouble and occupies more space in the statute than is necessary, and the only conceivable object that can be attributed to the draftsman in using that method is obscurity. Fairness demands that there should be drafting of the law that people can read. That is what I intended to say."

The Attorney-General: You said that the only motive that could be imputed to the draftsman was obscurity, but he takes his instructions, and no doubt he was instructed to draw it in that way. The people who instructed him had not the motive of obscurity but of simplicity of Parliamentary procedure.

Mr. Justice Rowlatt: Is there any difference? (Laughter.) It is a very serious matter, and I cannot conceive why the statute should be drawn like this when you can reprint the whole thing.

The Attorney-General: I have mentioned it in the House of Commons since you made the observation, and it was explained.

Mr. Justice Rowlatt: What I thought was said was that the section was necessary by reason of the evasiveness of the taxpayer.

The Attorney-General: I took the liberty of explaining that the amendments are printed in that way because, if you redraft the whole section, you provide line by line that which might be subject-matter of amendments. It is really a matter of the exigencies of Parliamentary time.

Mr. Justice Rowlatt: I do want to point out that it is a matter of fairness to the public that the section should be such as anybody can read. Beyond that I do not want to be drawn into a discussion which would be out of place in my mouth.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday July 23	Mr. Ritchie	Mr. Hicks Beach	Mr. Bloxam	Mr. More
Tuesday .. 24	Bloxam	Synge	*More	Hicks Beach
Wednesday 25	Jolly	More	*Hicks Beach	Bloxam
Thursday . 26	Hicks Beach	Ritchie	*Bloxam	More
Friday 27	Synge	Bloxam	*More	Hicks Beach
Saturday .. 28	More	Jolly	Hicks Beach	Bloxam
	Mr. Justice Maugham.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday July 23	Mr. Hicks Beach	Mr. Synge	Mr. Jolly	Mr. *Ritchie
Tuesday .. 24	*Bloxam	*Jolly	Ritchie	Synge
Wednesday 25	More	*Ritchie	Synge	*Jolly
Thursday . 26	*Hicks Beach	*Synge	Jolly	Ritchie
Friday 27	Bloxam	Jolly	Ritchie	*Synge
Saturday .. 28	More	Ritchie	Synge	Jolly

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 26th July, 1928.

	Middle Price 18th July	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	86½	4 12 6	—
Consols 2½%	55⅞	4 9 6	—
War Loan 5% 1929-47	101⅝	4 18 9	4 18 9
War Loan 4½% 1925-45	98	4 12 6	4 16 6
War Loan 4% (Tax free) 1929-42	101	3 19 0	4 0 0
Funding 4% Loan 1960-1990	90½	4 8 0	4 11 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94½	4 6 0	4 7 0
Conversion 4½% Loan 1940-44	98½	4 12 0	4 16 0
Conversion 3½% Loan 1961	77⅝	4 10 0	—
Local Loans 3% Stock 1921 or after	65	4 12 0	—
Bank Stock	264	4 11 0	—
India 4½% 1950-55	93½	4 16 6	5 0 0
India 3½%	71½	4 18 0	—
India 3%	61½	4 17 0	—
Sudan 4½% 1939-73	96	4 14 0	4 17 0
Sudan 4% 1974	86	4 13 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	83	3 13 0	4 6 0
Colonial Securities.			
Canada 3% 1938	86	3 11 0	4 18 0
Cape of Good Hope 4% 1916-36	94	4 5 0	5 0 6
Cape of Good Hope 3½% 1929-49	81	4 7 0	5 0 0
Commonwealth of Australia 5% 1945-75	99	5 1 0	5 2 6
Gold Coast 4½% 1956	95	4 15 0	4 17 6
Jamaica 4½% 1941-71	95	4 15 0	4 18 6
Natal 4% 1937	94	4 5 0	5 0 0
New South Wales 4½% 1935-45	90	5 0 0	5 7 0
New South Wales 5% 1945-65	98	5 2 0	5 3 0
New Zealand 4½% 1945	97	4 13 0	4 17 6
New Zealand 5% 1946	103	4 17 0	4 16 6
Queensland 5% 1940-60	100	5 0 0	5 3 0
South Africa 5% 1945-75	102	4 18 0	5 0 0
South Australia 5% 1945-75	98	5 2 0	5 0 0
Tasmania 5% 1945-75	100	5 0 0	5 0 0
Victoria 5% 1945-75	98	5 2 0	5 0 0
West Australia 5% 1945-75	98	5 2 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	64	4 13 0	—
Birmingham 5% 1946-56	104	4 16 6	4 16 0
Cardiff 5% 1945-65	103	4 17 0	4 18 0
Croydon 3% 1940-60	71	4 5 6	5 0 0
Hull 3½% 1925-55	77	4 11 0	5 0 0
Liverpool 3½% Redeemable at option of Corporation	75	4 13 6	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	55	4 11 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65	4 12 6	—
Manchester 3% on or after 1941	64	4 13 6	—
Metropolitan Water Board 3% 'A' 1963-2003	66	4 12 0	4 17 0
Metropolitan Water Board 3% 'B' 1934-2003	67	4 9 6	4 15 6
Middlesex C. C. 3½% 1927-47	83	4 4 6	4 17 0
Newcastle 3½% Irredeemable	72	4 17 0	—
Nottingham 3% Irredeemable	64	4 15 6	—
Stockton 5% 1946-66	101	4 19 0	4 19 0
Wolverhampton 5% 1946-56	103	4 17 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	82xd	4 17 6	—
Gt. Western Rly. 5% Rent Charge	99½xd	5 0 6	—
Gt. Western Rly. 5% Preference	95½	5 5 0	—
L. & N. E. Rly. 4% Debenture	76	5 5 6	—
L. & N. E. Rly. 4% Guaranteed	71½	5 12 0	—
L. & N. E. Rly 4% 1st Preference	61½	6 10 0	—
L. Mid. & Scot. Rly. 4% Debenture	79	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	78	5 2 0	—
L. Mid. & Scot. Rly. 4% Preference	71	5 13 0	—
Southern Railway 4% Debenture	79	5 1 0	—
Southern Railway 5% Guaranteed	99½	5 0 6	—
Southern Railway 5% Preference	90½	5 10 6	—

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EX-OFFICERS AND OTHER RANKS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION, OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone: Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion, and the name of this paper.

EX-OFFICER desires post Manager of garage. Good organiser, thorough knowledge of electricity, engines, motors, accumulators, general repairs to cars. 9504

EX-OFFICER, Freemason, seeks position as manager of small hotel in good locality (private and temperance). Irreproachable character, clean and of smart appearance. 423

MECHANICAL & ELECTRICAL ENGINEER, A.M.I.C.E., late Major R.G.A.; six years with two of the leading sales organisations; requires position as sales manager or sales organiser in an engineering company, manufacturing a speciality. 6861.

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